IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA—MONROE DIVISION

PHILIP CALLAIS, LLOYD PRICE, BRUCE ODELL, ELIZABETH ERSOFF, ALBERT CAISSIE, DANIEL WEIR, JOYCE LACOUR, CANDY CARROLL PEAVY, TANYA WHITNEY, MIKE JOHNSON, GROVER JOSEPH REES, ROLFE MCCOLLISTER, Plaintiffs,	)	
v.	)	Case No. 3:24-cv-00122-DCJ-CES-RRS
NANCY LANDRY, IN HER OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE, Defendant.	)	

PLAINTIFFS' MOTION FOR LEAVE TO FILE A RESPONSE IN OPPOSITION TO ROBINSON MOTION FOR RECONSIDERATION

Pursuant to the Local Rule 7.5, Plaintiffs request to file a Response in Opposition to the Robinson Movants' Motion for Reconsideration (**Doc. 103**) of this Court's Order Denying Intervention (**Doc. 79**). Local Rule 7.5 does not state that such requests require a showing of good cause, but good cause exists here as the Robinson Movants' intervention at this time would create an unnecessary burden on all parties and cause delay.

Plaintiffs did not seek the Robinson Movants' position regarding Plaintiffs' proposed response, but Rule 7.5 does not require parties to meet and confer regarding responses to motions, stating: "If the respondent opposes a motion, he or she shall file a response."

Dated this 13th day of March, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that, on this 13th day of March, 2024, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which gives notice of filing to all counsel of record.

/s/ Edward D. Greim
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Defendant.	)	

PLAINTIFFS' OPPOSITION TO ROBINSON MOVANTS' MOTION TO RECONSIDER ORDER DENYING INTERVENTION

INTRODUCTION

The Robinson Movants re-argue their Motion to Intervene without raising significant new points, let alone presenting the "extraordinary" circumstances necessary for this Court to undo its prior order. *See Leong v. Cellco P'ship*, No. CIV.A. 12–0711, 2013 WL 4009320 (W.D. La. July 31, 2013) (Rule 54(b) reconsideration of interlocutory orders follows the same standard as Rule 59(e) motions to alter or amend a final judgment); *Templet v. HydroChem Inc.*, 367 F.3d 473, 479 (5th Cir. 2004) (movant must show a "clearly establish[ed] manifest error of law or fact" or "newly discovered evidence" to show a court's prior judgment was incorrect).

In this, the Robinson Movants copy the approach of the Galmon Movants' Motion for Reconsideration (**Doc. 96-1**). For that reason—although the Robinson Movants' Motion provides a lengthier argument than the Galmon Movants'—Robinson Movants should share the Galmon Movants' fate. The Robinson Movants identify neither a manifest error of law or fact nor newly discovered evidence. The State has presented a *more* rigorous defense of SB8 than the Robinson Movants initially predicted, as demonstrated in the State's Response to Plaintiffs' Preliminary Injunction, **Doc. 86**. Like the Galmon Movants, the Robinson Movants not only ignore the merits of this filing, but they also make no attempt to satisfy the requisite standard for intervention that this Court indicated it would apply to future motions: "adversity of interest, collusion, or nonfeasance on the part of the State." **Doc. 79, at 6**.

The Robinson and Galmon Movants' shared desire that the State raise a slightly different argument—that the drafting of SB8 was motivated by other factors—falls far short of adversity of interest, collusion, or nonfeasance. As Plaintiffs showed in their Preliminary Injunction Reply, the "political motivation" argument is never a stand-alone basis for satisfying strict scrutiny in the face of a racial gerrymander. It is certainly not a defense in this case even under the Robinson Movants' unsupported and unsupportable version of the facts. The State is doing the parties, the Court, the

voters, and even the Movants themselves a service by refraining from exploring that rabbit hole. The Robinson and Galmon Movants are free to continue to file their own amicus briefs, but their shared strategy of raising a "political" diversion cannot be allowed to stall this case and possibly endanger a remedy for SB8's blatant racial gerrymander. Thus, for these reasons, and the reasons discussed more fully below, the Court should deny their Motion to Reconsider (**Doc. 103-1)**.

BACKGROUND

On February 7, 2024, Press Robinson, Edgar Cage, Dorothy Nairene, Edwin Rene Soule, Alice Washington, Clee Earnest Lowe, Davante Lewis, Martha Davis, Ambrose Sims, National Association for the Advancement of Colored People Louisiana State Conference, and Power Coalition for Equity and Justice (collectively, the "Robinson Movants") filed a Motion to Intervene as Defendants, arguing for intervention as of right or permissively. **Doc. 18, at 1**. Another group, the "Galmon Movants," **Doc. 10**, and the State of Louisiana also sought intervention, **Doc. 53**. This Court partially granted the Robinson Movants' motion—allowing them to intervene in any remedial phase of this case, denied the Galmon Movants' motion in toto, and granted the State's Motion to Intervene. **Doc. 79, at 9**.

The Court found the Robinson Movants had failed to establish the necessary "adversity of interest, collusion, or nonfeasance on the part of the State" to show that their interests were not adequately represented by the State. **Doc. 79, at 6**. The Court found that the State "must defend SB8 as a constitutionally drawn Congressional redistricting map" and that "[t]his is the same ultimate objective movants would have and interest they would defend at this stage of the proceedings." **Doc. 79, at 5**. The Court similarly concluded that the Robinson Movants do not have a special interest in presenting a defense in this litigation: "The *Robinson* and *Galmon* movants have neither a greater nor lesser interest in ensuring that this map does not run afoul of the 14th

Amendment to the United States Constitution than any other citizen of the State of Louisiana." **Doc. 79, at 6**. Thus, it found that the State would adequately represent their interests. ***Id***.

However, this Court did find that the Robinson Movants may permissibly intervene in the remedial phase of this case, reasoning that "[a] remedial phase would implicate the main objective movants fought for in the *Robinson* case[.]" **Doc. 79, at 7**. This Court stated that it would allow the *Robinson Movants* to "seek reconsideration of this ruling if they can establish adversity or collusion by the State." ***Id***.

Since this Court's Order regarding intervention, Defendants Secretary of State and the State filed Responses to Plaintiffs' Motion for Preliminary Injunction (**Doc. 17**). **Doc. 82 and 86,** respectively. The Galmon and Robinson Movants also filed lengthy and detailed Amicus Briefs opposing Plaintiffs' Motion for Preliminary Injunction. **Doc. 93 and 94**, respectively. Plaintiffs filed their Reply in Support of Preliminary Injunction, addressing all four briefs. **Doc. 101**.

On March 9, 2024, the Robinson Movants filed a Motion to Reconsider this Court's Order denying their intervention in part. **Doc. 103**. For the reasons stated below, this Court should deny the Robinson Movants' Motion to Reconsider.

ARGUMENT

No Federal Rule of Civil Procedure specifically applies to a motion to reconsider. *Cressionnie v. Hample*, 184 Fed. App'x. 366, 369 (5th Cir. 2006); *Shepard v. Int'l Paper Co.*, 372 F.3d 326, 328 (5th Cir. 2004). But a district court may reconsider an interlocutory order pursuant to Federal Rule of Civil Procedure 54(b), which allows courts to revise "any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties ... before the entry of judgment." Fed. R. Civ. P. 54(b).

Courts in the Western District of Louisiana typically evaluate Rule 54(b) motions to reconsider interlocutory orders under the same standards that govern Rule 59(e) motions to alter

or amend a final judgment. *See Leong*, 2013 WL 4009320. And so construed, the Court has discretion in deciding such motions to reconsider. *Templet*, 367 F.3d at 482–83.

Though the Court has some discretion exists, altering or amending a judgment under Rule 59(e) is an "extraordinary remedy" used infrequently, and only in specific circumstances. *Templet*, 367 F.3d at 482–83. "A motion to alter or amend the judgment under Rule 59(e) 'must clearly establish either a manifest error of law or fact or must present newly discovered evidence' and 'cannot be used to raise arguments which could, and should, have been made before the judgment issued." *Schiller v. Physicians Res. Grp., Inc.*, 342 F.3d 563, 567 (5th Cir. 2003) (quoting *Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 863-64 (5th Cir. 2003)) (other citations and quotation marks omitted).

This Court should deny the Robinson Movants' Motion to Reconsider for multiple reasons. First, the State adequately represents the Robinson Movants' interests. Second, all Robinson Movants' arguments are suited for a remedial phase of this case—to which they will be a party. Third, it would be unnecessary and burdensome for the Court to treat them as litigating Amici.

I. The State Adequately Represents Robinson Movants in this Litigation.

a. The State's interest is not adverse to the interest of Robinson Movants.

The Robinson Movants concede that they share the same ultimate interest with the State—defending SB8. **Doc. 103-1, at 11**. In fact, neither the interests of the State nor of the Robinson Movants have changed since this Court's Order. Even so, the Robinson Movants suggest their interest "diverges" from the State in that the "State ignores the primary argument underpinning Plaintiffs' request for a preliminary injunction—that race predominated in the passage of SB8." **Doc. 103-1, at 11**. The Robinson Movants then imply that "other factors, including political motivations and commonality of interests" explain away the Legislature's action. **Doc. 103-1, at 11**. But this supposed "divergence" is truly no more than a preference regarding litigation strategy,

and, as this Court observed in its original Order denying the Robinson Movants' intervention in part, "[d]ifferences of opinion regarding an existing party's litigation strategy or tactics used in pursuit thereof, without more, do not rise to an adversity of interest." **Doc. 79, at 5** (quoting *Lamar v. Lynaugh*, 12 F.3d 1099, 1099 n.4 (5th Cir. 1993) (per curiam). Something "more" is required. ***Id***.

One reason for this requirement is that the State has the ethical obligation to represent the State of Louisiana and its laws, including SB8. ***Id***. Given that charge, the State itself is in the best position to evaluate its own case, develop a litigation strategy, and craft arguments in favor of that litigation strategy. There is no reason this Court should doubt the State's ability to do so, and the Robinson Movants supply none. Indeed, in its Order partially denying intervention, this Court found "no indication of the likelihood of collusion or nonfeasance on behalf of the State." ***Id***. The Robinson Movants provide no basis to disturb this finding.[1]

b. There is no conflict of interest regarding Dr. Hefner.

Movants, without support, allege an "obvious conflict of interest" because the State used Michael Hefner as an expert in the Robinson litigation. **Doc. 103-1, at 12**. No such conflict exists. As the State made clear in its Responses to Galmon and Robinson Movants' Motions to Reconsider (**Docs. 104, 107**), the State hardly used Dr. Hefner as an expert in the *Robinson* case, only citing his report a handful of times during the preliminary injunction briefing before "never utiliz[ing] Dr. Hefner for the remainder of the *Robinson* litigation." **Doc. 104, at 4-5; Doc 107, at 5**.

[1] Robinson Movants briefly imply that the State is too tethered to the positions it took in the *Robinson* litigation to adequately represent them. **Doc. 103-1, at 13**. But this fear is misplaced. In short, the old law at issue in the *Robinson* litigation (HB1) is fully repealed, and the State has no ability or reason to further defend it.

Moreover, there are no inconsistencies to point out in Dr. Hefner's reports. The Robinson Movants, in referring to their single alleged inconsistency, quote a part of Dr. Hefner's report that compares two different maps of Louisiana broken down into regions based on various categories. **Doc. 103-1, at 12; Doc. 103-3, at 9-10** ("The Louisiana Regional Folklife Program briefly describes each region as follows . . ."). At no point did Dr. Hefner "describe[] a Red River community of interest running 'from Shreveport to the Mississippi River.'" **Doc. 103-1, at 12**. Instead, Dr. Hefner was referencing a map made by the Louisiana Regional Folklife Program, containing five regions and their geographical descriptions. **Doc. 103-3, at 9**. Even so, as addressed below, Robinson Movants are free to express their opinions of experts as amici.

c. The State has adequately represented Robinson Movants' interest by choosing to forego baseless arguments.

Finally, Robinson Movants are not entitled to intervene at the liability stage merely so they can fight a losing battle. They seek to argue that other considerations such as "political motivations," rather than race, predominated in SB8. **Doc. 103-1, at 11**. But for the reasons stated more fully in Plaintiffs' Reply Brief, **Doc. 101**, that is an argument doomed to fail at the predominance stage (*Shaw* prong 1)—and that actually undermines the State's (and Robinson Amici's) entire defense at the strict scrutiny stage (*Shaw* prong 2).

At *Shaw* prong 1, the facts demonstrate that race predominated in the legislators' construction of this map that, in their own words, *had* to have two majority-African American districts with over 50% BVAP. **Doc. 101, at 10, 22**. Direct evidence of legislators' statements and circumstantial evidence of these two bizarrely shaped districts uniting disparate parts of Louisiana all point toward that inevitable conclusion. And contrary to Robinson Movants' contention, the presence of traditional redistricting criteria would not save the State's case. *Bethune-Hill v. Va. State Bd. of Elecs.*, 580 U.S. 178, 189 (2017).

At *Shaw* prong 2, the political defense would destroy the State's case for at least two reasons. First, political considerations are not a compelling interest to justify racial line-drawing. *See Cooper v. Harris*, 581 U.S. 285, 308 n.7 (2017) ("If legislators use race as their predominant districting criterion with the end goal of advancing their partisan interests . . . their action still triggers strict scrutiny. . . . In other words, the sorting of voters on the grounds of their race remains suspect even if race is meant to function as a proxy for other (including political) characteristics." (citing *Bush v. Vera*, 517 U.S. 952, 968-70 (1996) (plurality opinion) and *Miller v. Johnson*, 515 U.S. 900, 914 (1995))); *Bush*, 517 U.S. at 972-73 (finding race predominated where race was used "both as a proxy to protect the political fortunes of adjacent incumbents, and for its own sake in maximizing the minority population of District 30 regardless of traditional districting principles"). Otherwise, a State could freely racially gerrymander so long as its goal was to create a political majority. *See Cooper*, 581 U.S. at 319 n.15 (noting a legislature may not "resort to race-based districting for ultimately political reasons, leveraging the strong correlation between race and voting behavior to advance their partisan interests"). And second, the political defense is in tension with the State's (and Robinson Amici's) VRA defense. *Cf. id.* at 308 n.7, 317. The State could not argue on the one hand that it was motivated by political concerns, and then on the other hand that it was motivated by the VRA's racial concerns. *Id*. at 308 n.7, 317-18. The State had to choose one. It has made the litigation choice it believes will most likely preserve two minority-controlled districts—the litigation goal it shares with Robinson Movants.

II. The Court has sufficiently protected Robinson Movants' alleged interest.

a. Robinson Movants' interest has not changed since its first motion.

This Court only grants a Motion to Reconsider when there is a significant change in law or fact or clearly established manifest error. *Schiller*, 342 F.3d at 567. Robinson Movants identify no

new law or interests in their Motion to Reconsider, and their interest and position have not changed since the Court's Order. **Doc. 103-1**. Thus, the Court need not reconsider its Order.

As this Court previously acknowledged, Robinson Movants have no special vindicable interest in the liability stage of the proceedings. All that is at issue in this stage is the constitutionality of SB8, not any proposed maps by Robinson Movants. As the Court made clear:

> SB8 is not the Congressional districting map of the proposed Robinson and Galmon intervenors. It is the Congressional districting map *of the State of Louisiana* – passed by both Houses of the Louisiana Legislature and then signed into law by the Governor. The *Robinson* and *Galmon* movants have neither a greater nor lesser interest in ensuring that this map does not run afoul of the 14th Amendment to the United States Constitution other than any citizen of the State of Louisiana.

Doc. 79, at 6 (emphasis added). The map was enacted by the State and is defensible by the State and its designated agents alone. *Berger v. N.C. State Conference of the NAACP*, 597 U.S. 179, 193 (2022); *Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1952 (2019); *Hollingsworth v. Perry*, 570 U.S. 693, 708, 710 (2013) (holding that a private party may not defend constitutionality of state statute). A sovereign entity has the right to speak "with a single voice" and the right to choose who may litigate on its behalf. *Va. House of Delegates*, 139 S. Ct. at 1952. "'[T]he choice belongs to' the sovereign State." *Berger*, 597 U.S. at 192 (quoting *Va. House of Delegates*, 139 S. Ct. at 1952). Robinson Movants cite no authority under Louisiana law that grants them the power to defend the State's laws as quasi-state officers.

Moreover, they have no interest in defending this law. As the Court acknowledged, Robinson Movants are not entitled to the particular map in SB8 any more than any other private citizens. **Doc. 79, at 6**. Thus, Robinson Movants have no interest in intervention at this stage, much less in setting the State's litigation strategy.

b. The Court's Orders already protect Robinson Movants' alleged interest.

Likewise, Robinson Movants are sufficiently protected because the Court has already given them a forum to advance their alleged interest in a map with "two Black-majority Congressional districts." **Doc 79, at 6**. Because the liability stage of the proceedings only deals with the constitutionality and legality of SB8, not the lawfulness of proposed maps, Robinson Movants will have a full opportunity to protect their alleged interest without prejudice at the remedial stage when the Court considers a map to institute.

Not only has the Court granted them full participation in the remedial stage to make these arguments, but the Court has also permitted them to file briefs as amici in the preliminary injunction stage. **Doc. 92**. The Court has done more than enough to accommodate them.

c. Further intervention would significantly harm existing parties.

Moreover, as part of the intervention calculus, "the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Rule 24(b)(3). Those concerns are even more prevalent now than when this motion was originally litigated given the impending trial. Robinson Movants only moved to reconsider on Saturday, March 9—less than a month before trial commences, **Doc. 63**, and almost two weeks after the Court's Order denying intervention, **Doc. 79**. Intervention at this stage on this expedited schedule would invite chaos. Document discovery is already underway (and it is too late to serve new discovery), expert designation and reports are due in ten days, exhibit lists, witness lists, and bench books are due in twenty days, and trial is only twenty-seven days away. **Doc. 63**. Movants would add over twenty attorneys from seven different offices, **Doc. 103-1, at 18-19**, and would cram their case into an already full two-day trial. This would severely prejudice the parties who actually have an interest at the liability stage of the proceedings, and whose trial preparation has already been interrupted by serial efforts to intervene by two different sets of movants. *Rotstain v. Mendez*, 986

F.3d 931, 938 (5th Cir. 2021) (noting that existing parties experience prejudice from intervention when they would face additional discovery and increased litigation costs).

Additionally, Robinson Movants' proposed scheme where the Court would grant them the opportunity to argue at the liability trial, conduct their own discovery, and do their own witness examinations as "Amici" would work the same prejudice to existing parties. **Doc. 103-1, at 11**. This would be an effective intervention in the liability stage, and Robinson "Amici" would be litigating parties in all but name. Again, Robinson Movants do not have an interest in the liability stage of the proceedings. And even if they did, the existing prejudice, harm, and undue delay to existing parties with actual interests when trial is less than a month away and only lasts for two days prohibits this litigating position. Fed. R. Civ. P. 24(b).

Finally, intervention is wholly unnecessary here for two additional reasons. Plaintiffs will continue to not oppose Robinson Movants' motions to file amicus briefs. (Plaintiffs did not oppose Robinson Intervenors' Motion to File an Amicus Brief, **Doc. 87, at 1-2**, and Plaintiffs provided a fulsome response to that Brief, **Doc. 101**.) And, as already communicated to Robinson Movants, Plaintiffs will share any discovery sent to Defendants with Robinson Movants.

CONCLUSION

Plaintiffs respectfully ask the Court to deny the Motion for Reconsideration (**Doc. 103**).

Dated this 13th day of March, 2024 Respectfully submitted,

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PLAINTIFFS' OPPOSITION TO ROBINSON MOVANTS' MOTION TO RECONSIDER ORDER DENYING INTERVENTION

INTRODUCTION

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voters, and even the Movants themselves a service by refraining from exploring that rabbit hole. The Robinson and Galmon Movants are free to continue to file their own amicus briefs, but their shared strategy of raising a "political" diversion cannot be allowed to stall this case and possibly endanger a remedy for SB8's blatant racial gerrymander. Thus, for these reasons, and the reasons discussed more fully below, the Court should deny their Motion to Reconsider (**Doc. 103-1)**.

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Amendment to the United States Constitution than any other citizen of the State of Louisiana." **Doc. 79, at 6**. Thus, it found that the State would adequately represent their interests. ***Id***.

However, this Court did find that the Robinson Movants may permissibly intervene in the remedial phase of this case, reasoning that "[a] remedial phase would implicate the main objective movants fought for in the *Robinson* case[.]" **Doc. 79, at 7**. This Court stated that it would allow the *Robinson Movants* to "seek reconsideration of this ruling if they can establish adversity or collusion by the State." ***Id***.

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or amend a final judgment. *See Leong*, 2013 WL 4009320. And so construed, the Court has discretion in deciding such motions to reconsider. *Templet*, 367 F.3d at 482–83.

Though the Court has some discretion exists, altering or amending a judgment under Rule 59(e) is an "extraordinary remedy" used infrequently, and only in specific circumstances. *Templet*, 367 F.3d at 482–83. "A motion to alter or amend the judgment under Rule 59(e) 'must clearly establish either a manifest error of law or fact or must present newly discovered evidence' and 'cannot be used to raise arguments which could, and should, have been made before the judgment issued." *Schiller v. Physicians Res. Grp., Inc.*, 342 F.3d 563, 567 (5th Cir. 2003) (quoting *Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 863-64 (5th Cir. 2003)) (other citations and quotation marks omitted).

This Court should deny the Robinson Movants' Motion to Reconsider for multiple reasons. First, the State adequately represents the Robinson Movants' interests. Second, all Robinson Movants' arguments are suited for a remedial phase of this case—to which they will be a party. Third, it would be unnecessary and burdensome for the Court to treat them as litigating Amici.

I. The State Adequately Represents Robinson Movants in this Litigation.

a. The State's interest is not adverse to the interest of Robinson Movants.

The Robinson Movants concede that they share the same ultimate interest with the State—defending SB8. **Doc. 103-1, at 11**. In fact, neither the interests of the State nor of the Robinson Movants have changed since this Court's Order. Even so, the Robinson Movants suggest their interest "diverges" from the State in that the "State ignores the primary argument underpinning Plaintiffs' request for a preliminary injunction—that race predominated in the passage of SB8." **Doc. 103-1, at 11**. The Robinson Movants then imply that "other factors, including political motivations and commonality of interests" explain away the Legislature's action. **Doc. 103-1, at 11**. But this supposed "divergence" is truly no more than a preference regarding litigation strategy,

and, as this Court observed in its original Order denying the Robinson Movants' intervention in part, "[d]ifferences of opinion regarding an existing party's litigation strategy or tactics used in pursuit thereof, without more, do not rise to an adversity of interest." **Doc. 79, at 5** (quoting *Lamar v. Lynaugh*, 12 F.3d 1099, 1099 n.4 (5th Cir. 1993) (per curiam). Something "more" is required. ***Id***.

One reason for this requirement is that the State has the ethical obligation to represent the State of Louisiana and its laws, including SB8. ***Id***. Given that charge, the State itself is in the best position to evaluate its own case, develop a litigation strategy, and craft arguments in favor of that litigation strategy. There is no reason this Court should doubt the State's ability to do so, and the Robinson Movants supply none. Indeed, in its Order partially denying intervention, this Court found "no indication of the likelihood of collusion or nonfeasance on behalf of the State." ***Id***. The Robinson Movants provide no basis to disturb this finding.[1]

b. There is no conflict of interest regarding Dr. Hefner.

Movants, without support, allege an "obvious conflict of interest" because the State used Michael Hefner as an expert in the Robinson litigation. **Doc. 103-1, at 12**. No such conflict exists. As the State made clear in its Responses to Galmon and Robinson Movants' Motions to Reconsider (**Docs. 104, 107**), the State hardly used Dr. Hefner as an expert in the *Robinson* case, only citing his report a handful of times during the preliminary injunction briefing before "never utiliz[ing] Dr. Hefner for the remainder of the *Robinson* litigation." **Doc. 104, at 4-5; Doc 107, at 5**.

[1] Robinson Movants briefly imply that the State is too tethered to the positions it took in the *Robinson* litigation to adequately represent them. **Doc. 103-1, at 13**. But this fear is misplaced. In short, the old law at issue in the *Robinson* litigation (HB1) is fully repealed, and the State has no ability or reason to further defend it.

Moreover, there are no inconsistencies to point out in Dr. Hefner's reports. The Robinson Movants, in referring to their single alleged inconsistency, quote a part of Dr. Hefner's report that compares two different maps of Louisiana broken down into regions based on various categories. **Doc. 103-1, at 12; Doc. 103-3, at 9-10** ("The Louisiana Regional Folklife Program briefly describes each region as follows . . ."). At no point did Dr. Hefner "describe[] a Red River community of interest running 'from Shreveport to the Mississippi River.'" **Doc. 103-1, at 12**. Instead, Dr. Hefner was referencing a map made by the Louisiana Regional Folklife Program, containing five regions and their geographical descriptions. **Doc. 103-3, at 9**. Even so, as addressed below, Robinson Movants are free to express their opinions of experts as amici.

c. The State has adequately represented Robinson Movants' interest by choosing to forego baseless arguments.

Finally, Robinson Movants are not entitled to intervene at the liability stage merely so they can fight a losing battle. They seek to argue that other considerations such as "political motivations," rather than race, predominated in SB8. **Doc. 103-1, at 11**. But for the reasons stated more fully in Plaintiffs' Reply Brief, **Doc. 101**, that is an argument doomed to fail at the predominance stage (*Shaw* prong 1)—and that actually undermines the State's (and Robinson Amici's) entire defense at the strict scrutiny stage (*Shaw* prong 2).

At *Shaw* prong 1, the facts demonstrate that race predominated in the legislators' construction of this map that, in their own words, *had* to have two majority-African American districts with over 50% BVAP. **Doc. 101, at 10, 22**. Direct evidence of legislators' statements and circumstantial evidence of these two bizarrely shaped districts uniting disparate parts of Louisiana all point toward that inevitable conclusion. And contrary to Robinson Movants' contention, the presence of traditional redistricting criteria would not save the State's case. *Bethune-Hill v. Va. State Bd. of Elecs.*, 580 U.S. 178, 189 (2017).

At *Shaw* prong 2, the political defense would destroy the State's case for at least two reasons. First, political considerations are not a compelling interest to justify racial line-drawing. *See Cooper v. Harris*, 581 U.S. 285, 308 n.7 (2017) ("If legislators use race as their predominant districting criterion with the end goal of advancing their partisan interests . . . their action still triggers strict scrutiny. . . . In other words, the sorting of voters on the grounds of their race remains suspect even if race is meant to function as a proxy for other (including political) characteristics." (citing *Bush v. Vera*, 517 U.S. 952, 968-70 (1996) (plurality opinion) and *Miller v. Johnson*, 515 U.S. 900, 914 (1995))); *Bush*, 517 U.S. at 972-73 (finding race predominated where race was used "both as a proxy to protect the political fortunes of adjacent incumbents, and for its own sake in maximizing the minority population of District 30 regardless of traditional districting principles"). Otherwise, a State could freely racially gerrymander so long as its goal was to create a political majority. *See Cooper*, 581 U.S. at 319 n.15 (noting a legislature may not "resort to race-based districting for ultimately political reasons, leveraging the strong correlation between race and voting behavior to advance their partisan interests"). And second, the political defense is in tension with the State's (and Robinson Amici's) VRA defense. *Cf. id.* at 308 n.7, 317. The State could not argue on the one hand that it was motivated by political concerns, and then on the other hand that it was motivated by the VRA's racial concerns. *Id*. at 308 n.7, 317-18. The State had to choose one. It has made the litigation choice it believes will most likely preserve two minority-controlled districts—the litigation goal it shares with Robinson Movants.

II. The Court has sufficiently protected Robinson Movants' alleged interest.

a. Robinson Movants' interest has not changed since its first motion.

This Court only grants a Motion to Reconsider when there is a significant change in law or fact or clearly established manifest error. *Schiller*, 342 F.3d at 567. Robinson Movants identify no

new law or interests in their Motion to Reconsider, and their interest and position have not changed since the Court's Order. **Doc. 103-1**. Thus, the Court need not reconsider its Order.

As this Court previously acknowledged, Robinson Movants have no special vindicable interest in the liability stage of the proceedings. All that is at issue in this stage is the constitutionality of SB8, not any proposed maps by Robinson Movants. As the Court made clear:

> SB8 is not the Congressional districting map of the proposed Robinson and Galmon intervenors. It is the Congressional districting map *of the State of Louisiana* – passed by both Houses of the Louisiana Legislature and then signed into law by the Governor. The *Robinson* and *Galmon* movants have neither a greater nor lesser interest in ensuring that this map does not run afoul of the 14th Amendment to the United States Constitution other than any citizen of the State of Louisiana.

Doc. 79, at 6 (emphasis added). The map was enacted by the State and is defensible by the State and its designated agents alone. *Berger v. N.C. State Conference of the NAACP*, 597 U.S. 179, 193 (2022); *Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1952 (2019); *Hollingsworth v. Perry*, 570 U.S. 693, 708, 710 (2013) (holding that a private party may not defend constitutionality of state statute). A sovereign entity has the right to speak "with a single voice" and the right to choose who may litigate on its behalf. *Va. House of Delegates*, 139 S. Ct. at 1952. "'[T]he choice belongs to' the sovereign State." *Berger*, 597 U.S. at 192 (quoting *Va. House of Delegates*, 139 S. Ct. at 1952). Robinson Movants cite no authority under Louisiana law that grants them the power to defend the State's laws as quasi-state officers.

Moreover, they have no interest in defending this law. As the Court acknowledged, Robinson Movants are not entitled to the particular map in SB8 any more than any other private citizens. **Doc. 79, at 6**. Thus, Robinson Movants have no interest in intervention at this stage, much less in setting the State's litigation strategy.

b. The Court's Orders already protect Robinson Movants' alleged interest.

Likewise, Robinson Movants are sufficiently protected because the Court has already given them a forum to advance their alleged interest in a map with "two Black-majority Congressional districts." **Doc 79, at 6**. Because the liability stage of the proceedings only deals with the constitutionality and legality of SB8, not the lawfulness of proposed maps, Robinson Movants will have a full opportunity to protect their alleged interest without prejudice at the remedial stage when the Court considers a map to institute.

Not only has the Court granted them full participation in the remedial stage to make these arguments, but the Court has also permitted them to file briefs as amici in the preliminary injunction stage. **Doc. 92**. The Court has done more than enough to accommodate them.

c. Further intervention would significantly harm existing parties.

Moreover, as part of the intervention calculus, "the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Rule 24(b)(3). Those concerns are even more prevalent now than when this motion was originally litigated given the impending trial. Robinson Movants only moved to reconsider on Saturday, March 9—less than a month before trial commences, **Doc. 63**, and almost two weeks after the Court's Order denying intervention, **Doc. 79**. Intervention at this stage on this expedited schedule would invite chaos. Document discovery is already underway (and it is too late to serve new discovery), expert designation and reports are due in ten days, exhibit lists, witness lists, and bench books are due in twenty days, and trial is only twenty-seven days away. **Doc. 63**. Movants would add over twenty attorneys from seven different offices, **Doc. 103-1, at 18-19**, and would cram their case into an already full two-day trial. This would severely prejudice the parties who actually have an interest at the liability stage of the proceedings, and whose trial preparation has already been interrupted by serial efforts to intervene by two different sets of movants. *Rotstain v. Mendez*, 986

F.3d 931, 938 (5th Cir. 2021) (noting that existing parties experience prejudice from intervention when they would face additional discovery and increased litigation costs).

Additionally, Robinson Movants' proposed scheme where the Court would grant them the opportunity to argue at the liability trial, conduct their own discovery, and do their own witness examinations as "Amici" would work the same prejudice to existing parties. **Doc. 103-1, at 11**. This would be an effective intervention in the liability stage, and Robinson "Amici" would be litigating parties in all but name. Again, Robinson Movants do not have an interest in the liability stage of the proceedings. And even if they did, the existing prejudice, harm, and undue delay to existing parties with actual interests when trial is less than a month away and only lasts for two days prohibits this litigating position. Fed. R. Civ. P. 24(b).

Finally, intervention is wholly unnecessary here for two additional reasons. Plaintiffs will continue to not oppose Robinson Movants' motions to file amicus briefs. (Plaintiffs did not oppose Robinson Intervenors' Motion to File an Amicus Brief, **Doc. 87, at 1-2**, and Plaintiffs provided a fulsome response to that Brief, **Doc. 101**.) And, as already communicated to Robinson Movants, Plaintiffs will share any discovery sent to Defendants with Robinson Movants.

CONCLUSION

Plaintiffs respectfully ask the Court to deny the Motion for Reconsideration (**Doc. 103**).

Dated this 13th day of March, 2024 Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that, on this 13th day of March 2024, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which gives notice of filing to all counsel of record.

/s/ Edward D. Greim
Edward D. Greim

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA—MONROE DIVISION

PHILIP CALLAIS, LLOYD PRICE, BRUCE ODELL, ELIZABETH ERSOFF, ALBERT CAISSIE, DANIEL WEIR, JOYCE LACOUR, CANDY CARROLL PEAVY, TANYA WHITNEY, MIKE JOHNSON, GROVER JOSEPH REES, ROLFE MCCOLLISTER, Plaintiffs, v. NANCY LANDRY, IN HER OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE, Defendant.	)	Case No. 3:24-cv-00122

ORDER GRANTING PLAINTIFFS' MOTION TO FILE A RESPONSE IN OPPOSITION TO ROBINSON MOTION FOR RECONSIDERATION

This matter having come before the Court on Plaintiffs' Motion to File a Response in Opposition to Motion for Reconsideration (Doc. 111), and the Court having reviewed the Motion and considered the matter, finds and ORDERS as follows:

IT IS SO ORDERED:

(1) that Plaintiffs' Motion to File a Response in Opposition to Robinson Motion for Reconsideration, filed March 13, 2024 (Doc. 105), is granted and Plaintiffs may file a Response in Opposition to the Robinson Motion for Reconsideration.

_____
Judge Carl E. Stewart
United States Circuit Judge

_____
Judge Robert R. Summerhays
United States Circuit Judge

Judge David C. Joseph
United States District Judge

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